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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	2:11-cr-00427-HDM-CWH
)	2:13-cv-01068-HDM
Plaintiff,)	
)	
vs.)	ORDER
)	
JOSE RIVERA-CARBAJAL,)	
)	
Defendant.)	
_____)	

On June 7, 2012, the defendant pled guilty to the single-count indictment charging him with being a deported or removed alien unlawfully found in the United States. On November 13, 2012, the court sentenced defendant to 51 months imprisonment. Defendant appealed his judgment of conviction to the Ninth Circuit.

On June 17, 2013, while his direct appeal was still pending, defendant filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (#43). On June 21, 2013, the Ninth Circuit affirmed the court's judgment. Thereafter, defendant had ninety days within which to file any petition for a writ of certiorari. Accordingly, defendant's judgment did not become final until September 19, 2013.

The court could not entertain defendant's motion for habeas relief while his direct appeal remained pending. *United States v. LaFromboise*, 427 F.3d 680, 686 (9th Cir. 2005). As defendant's judgment is now final, however, the government shall file a response to defendant's § 2255 motion on or before November 19, 2013.

IT IS SO ORDERED.

DATED: This 20th day of September, 2013.

Howard D McKibbin
UNITED STATES DISTRICT JUDGE